

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-11975-RWZ

PACIFIC INDEMNITY COMPANY

v.

ALFRED KEMP,  
Individually and d/b/a KEMP PLUMBING  
and  
MARTIN SANDBORG,  
Individually and d/b/a SANDBORG PLUMBING NAD HEATING,

ORDER

February 9, 2007

ZOBEL, D.J.

Plaintiff, Pacific Indemnity Company, indemnified its insureds, Roger and Michele Marino, for large losses incurred as a result of a fire at their carriage house which was then in the last stages of a major renovation. As subrogee it now sues the plumbers on the project, Martin Sandborg and Alfred Kemp who worked for Sandborg. The major issue in dispute is the cause of the fire. Plaintiff's theory is that Kemp, who had done soldering work in the area, was responsible. Kemp denies responsibility and disagrees with the facts on which plaintiff relies. Kemp has also proffered the testimony of a metallurgist, Quinn Horn, and a fire expert, Timothy Myers, in support of his position. The matter is before me on plaintiff's motion in limine to exclude certain testimony of Kemp's experts.

Kemp agrees that Mr. Horn cannot testify what plumbers would “likely” or “typically” do.

However, plaintiff also objects to any testimony by Horn that all joints of the water piping in the house where the fire occurred were intact. Although the expert cannot testify to this as a matter of fact, he is not precluded from relying on facts presented to the jury and, based on his expertise, draw conclusions therefrom.

With respect to Mr. Myers, he may rely on the testimony of other experts as well as that of fact witnesses that has been admitted or is admissible.

To the extent these broad rulings may not have alleviated counsel’s concerns, the court will address them in the context of specific objections to specific questions at the trial.

The motion in limine (#16) is allowed in part and denied in part.

February 9, 2007

DATE

/s/Rya W. Zobel

RYA W. ZOBEL

UNITED STATES DISTRICT JUDGE